

SUPREME COURT OF NIGERIA

11TH FEBRUARY, 2005. SC.294/2000

**CORAM:- S. U. ONU, A. O. EJIWUNMI, N. TOBI, D. O. EDOZIE,
S. A. AKINTAN, JJSC**

PRINCE ADEBAJO SOSANYA APPELLANT

AND

1. ENGINEER ADEBAYO IDOWU

ONADEKO

2. EXECUTIVE GOVERNOR OF OGUN
STATE

3. ATTORNEY-GENERAL &
COMMISSIONER FOR JUSTICE,
OGUN STATE

..... RESPONDENTS

4. IKENNE LOCAL GOVERNMENT
COUNCIL CHAIRMAN

5. A. A. SOWALE, SECRETARY,
OGUNSERE RULING HOUSE

6. CHIEF J.S.SOBAKIN

(For and on behalf of authorized 12 Kingmakers
in respect of Odemo of Isara)

APPEALS - Grounds of appeal - Competence of - Vague and unreasonable grounds - Were rightly struck out by lower court (H1)

CHIEFTAINCY MATTERS - Nomination - Committee set up for that purpose - Cannot be opposed by the appellant - Given the circumstances (H2)

CHIEFTAINCY MATTERS - Ruling house - Nomination Committee set up by it - Appellant who failed to submit to the Committee's procedure - Cannot complain (H3)

APPEALS - Findings - Allegation that Court of Appeal - Made baseless

findings - Has no merit (H4)

PLEADINGS - Facts not pleaded - evidence cannot be led on them - As parties are bound by their pleadings (H5)

CHIEFTAINCY MATTERS - Nomination - Qualification - Under the relevant law - Candidate that descends from the female line - Of the Ruling house - May be nominated (H6)

APPEALS - Concurrent findings - Burden on appellant - To discredit the findings - Was not discharged (H7)

FACTS

Before the Ogun State High Court Shagamu, the plaintiff/appellant filed a chieftaincy claim against the defendants/respondents. He claimed inter alia, a declaration that the 1st respondent was not entitled to be nominated and appointed to the chieftaincy stool of the Odemo of Isara. He sought to establish that the 1st respondent descended from the female line whereas it is only one that descended from the male line of the ruling house that can qualify for nomination and appointment to the chieftaincy stool. But the relevant law provided for an occasion when a descendant of the female line can qualify. The appellant claimed that the procedure followed in the nomination of 1st respondent is in breach of the Chiefs Law of Ogun State. 1st, 5th and 6th respondents denied the appellant's claim. They established that a Nomination Committee was validly set up to consider candidates nominated by the respective branches of the ruling house. That appellant's own ruling house did not forward any name to the Committee. That at a meeting for the presentation of 1st respondent by the Committee as the consensus candidate for the stool, appellant's father objected and for the first time put him up as a contestant.

A vote was called for and the result was 175 votes for 1st respondent and 3 votes in favour of the appellant. 1st respondent's name was forwarded to the kingmakers who subsequently appointed him as the Odemo of Isara. A video tape of proceedings of the meeting held on

10th March, 1995, was tendered in evidence. The trial court found in favour of the respondents and dismissed the appellant's claim. Appellant's appeal to the Court of Appeal was dismissed save on issue of joinder of 4th respondent to the suit. Being dissatisfied, appellant has further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the court below was not in error in striking out grounds 1,3,4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 21 of the appellant's grounds of appeal and issues 1, 2, 3, 5, 6, 7, 8, 9, 10, and 12 formulated thereon for want of competence and whether that decision is not a nullity for infringing the appellant's right to fair hearing. (Grounds 1,2, 3, 4, 5 & 7)

2. Whether the decision of the court below affirming the selection of the 1st respondent as the Odemo of Isara can stand in law, when the appellant, who is a qualified candidate, was unjustifiably deprived of his right to participate in the selection exercise? (Grounds 8 & 9)

(3) Whether the court, as an appellate court, can make findings of fact which do not stem from the cases of the parties before it and what is the consequence of such findings? And

(4) Whether the 1st respondent was qualified to have contested for the office of Odemo of Isara when the requirement of the chieftaincy declaration was not met and whether the decision of the court below affirming the 1st respondent's selection is justifiable?" (Ground 10).

HELD (Unanimously dismissing the appeal per **EJIWUNMI JSC**)

Grounds of appeal - Competence of

1. It is, in my view, clear that from the above dicta reproduced, the decisions of this court that their thrust is that a competent ground of appeal should in the first place be drafted in conformity with the relevant Rules of this court or of the court below. Where that has been done, then the ground of appeal would not be declared incompetent unless it is vague, inconclusive and couched in such general terms that it discloses no reasonable ground of appeal. In other words, a ground of appeal which does not give sufficient notice of the precise nature of the complaints of

the appellant against the judgment appealed from is incompetent and deserves to be struck out by an appellate court. It is no doubt the principle that the court should endeavour to do substantial justice between the parties. The interest of justice must not be such as to allow an erring party to be given undue advantage over the respondent at the receiving end. I have in the light of the principles referred to above looked at the grounds of appeal struck out by the court below and which formed the subject to the complaint, arrived at the conclusion that the court below was right to have struck them out. (p. 521 D)

Nomination - Committee set up for that purpose

2. On a careful reading of the pieces of evidence given above, it is in my humble view manifest that it was agreed by the Ruling House that a candidate who wished to be considered for the stool in contest, must have his name submitted to the Nomination Committee appointed by the Ruling House. It is also clear that before the 10th of March, 1995, the only candidate considered by the Nomination Committee was the 1st respondent as the appellant's name was not submitted to that committee. It seems to me from the foregoing that the appellant through his father P. W. 1 having agreed as a member of the Rokodo/Ogunsere Ruling House that a Nomination Committee be set up to select a candidate to consider the credentials of whoever applied for the stool, cannot now seek to resile from that agreement by seeking to whittle the powers given to the Nomination Committee. The learned trial Judge in the course of his judgment carefully considered this aspect of the evidence before him. (p. 525 G)

Ruling house - Nomination Committee set up by it

3. The above findings were affirmed by the court below, and it is my view that from the evidence on record, that court was right to have affirmed the findings of the trial court. There can be no doubt that it was an agreed fact that the members of the Ruling House had in order to select a candidate for the stool set up a Nomination Committee to achieve that purpose. It was therefore the duty of persons interested to follow that procedure. As the

appellant had not taken that step, I fail to see how it can fairly be said that he was denied the opportunity of contesting for the stool. I must therefore uphold the judgment of the court below on this issue, no satisfactory argument having been advanced to show that the reasoning of the court below was perverse. (p. 527 A) B

APPEALS - Findings

4. The 3rd issue would now be considered. The question raised under the issue is that the court below made findings of fact which were not based on evidence led at the trial. However, from what I have said in respect of issue 2, my view is, there is no merit in respect of this issue. (p. 527 D) C

Facts not pleaded

5. Now, it is the law that parties are bound by their pleadings, and that should have guided the appellant in the pursuit of his case. And having not pleaded such facts to enable him lead evidence thereon, it was open to the trial court to reject such evidence. In *George v. Dominion Flour Mills* (supra), Bairamian, FJ., delivering the judgment of the court in emphasizing why pleadings must be such as would enable parties to know well in advance the case to be met at the trial, said at page 123 of the Report as follows: D E

“The fairness of a trial can be tested by the maxim audi alteram partem. Either party must be given an opportunity of being heard; but a party cannot be expected to prepare for the unknown; and the aim of pleadings is to give notice of the case to be met; which enables either party to prepare his evidence and arguments upon the issues raised by the pleadings, and saves either side from being taken by surprise. Incidentally, it makes for economy. The plaintiff will, and indeed must, confine his evidence to those issues; but the cardinal point is the avoidance of surprise.” (p. 528 E) F G

CHIEFTAINCY MATTERS - Nomination - Qualification

6. The key as to whether the 1st respondent is a qualified person to be nominated and appointed to the stool of the Odemo of Isara is in my humble H

view, Exhibit J., the Odemo of Isara Chieftaincy declaration. The relevant section reads thus:-

*"Paragraph (III) of the Chieftaincy Declaration states as follows:
The persons who may be proposed as candidates by a Ruling House*

B *entitled to fill the vacancy shall be*

(a) members of the Ruling House

(b) of the male line, provided that succession may devolve on the female where the former holders of the chieftaincy have no living issues or descendants of recognized ability, character and popular support, such
C *a candidate shall be a true descendant of the female.*

(c) sons of a previous holder of the title."

It is therefore clear that by virtue of this provision, the Ruling House was entitled to fill the vacancy by the 1st respondent who emerged as the
D only candidate, though from a female line, who possessed the recognized ability, character and popular support to justify his candidature. This issue must therefore be resolved against the appellant. (p. 529 C)

E ***Concurrent findings***

7. This appeal being against concurrent findings by the two lower courts in respect of the claims of the appellant to the stool of Odemo of Isara, the appellant has the burden of showing that those findings should not be
F upheld by this court. This is because it is now settled practice that the Supreme Court will not interfere with concurrent findings of the lower courts unless they are not justified by the evidence and have thereby occasioned a miscarriage of justice.

In the instant case, having regard to all that I have considered with
G regard to the issues raised in the appeal, it is my view that the appellant has failed to discharge that burden. In the result, this appeal must be dismissed. (p. 529 H)

H **NOTABLE POINTS OF INTEREST**

TOBIJSC

1. Determination of strength of grounds of appeal - Technicality should be avoided

In the determination of the strengths of grounds of appeal in an appeal, this court should not involve itself instinctively and parochially in technicalities or niceties of our adjectival law in the interpretation of the enabling rules of court. On the contrary, this court should examine the grounds of appeal to see whether they satisfy the rules governing the framing of grounds. B Once a ground of appeal is succinctly couched, specifically described and avoids vagueness, repetition, narration or argument, to the extent that the adverse party knows the exact complaint against the judgment, the court will be very reluctant to strike it out on mere technicality of not following C rules of court. After all, it is good law that rules of court are made for the courts and not the other way round and that is, the courts are not made for their rules. This means that if compliance with rules of court will cause injustice or miscarriage of justice in the case, the court will, in its choice of doing substantial justice, detract or move away from the rules of court. D (p. 532 G)

2. Court's evaluation of "error in law" and "misdirection"

Relevantly, the point I am struggling to make is that this court should not E look at the expressions "error in law" and "misdirection" in water-tight compartments of closets that can never meet at the same time in a ground of appeal. They could in some situations and they could not in some other situations. After all, tributaries, rivers, seas and oceans freely meet and F flow together in their waters with no harm. Why should "errors in law" and "misdirection" not meet at all like night and day?

I think this court should examine the totality of the ground of appeal to see whether apart from, or outside the meeting of the two expressions, G the ground of appeal contains sufficient complaint about the judgment to the adverse party to the extent that the adverse party is not put in any speculation or conjecture about what he is going to meet in the appellate court. A strict and rigid rule at dichotomizing between "error in law" and H "misdirection" in all grounds of appeal and for all times will be an artificiality with no practical substance in our adjectival law and the wider dimensions of the administration of justice. I will reject such a position. (p. 533 C)

3. *Fair hearing - Party that has no right cannot complain*

Learned counsel for the appellant submitted that by striking out the grounds of appeal and the related issues, the appellant was denied fair hearing. The principles of fair hearing can only apply in a case where a party has the right to be heard on a court process. If a party has no right to be heard in respect of a court process because the court process does not comply with the rules of court, the party cannot be heard to invoke the principles of fair hearing. In the circumstances, Issue No.1 fails and I dismiss it accordingly. (p. 534 E)

EDOZIEJSC

4. *Justification in striking out grounds of appeal*

I agree that the court below was justified in striking out the grounds of appeal complained of. I will add that even if those grounds were wrongly struck out, which is not conceded, the appellant was not thereby denied a fair hearing as it did not occasion any miscarriage of justice. This is so because, the court below, conscious of its role of doing substantial justice to the parties, based on the issues it formulated from the only competent ground of appeal, considered all the conceivable complaints against the judgment of the trial court. The learned senior counsel for the appellant did not pin-point at any complaint that was not addressed and show that if such a complaint had been considered and resolved in his favour, the result would have been different. (p. 540 A)

REPRESENTATION

M. O. Ayorinde, (with him, K. F. Eleu), for the Appellant.
 Chief Idowu Sofola, SAN., (with him, A. Awosanya & Oluseun Sofola), for the 1st, 5th and 6th Respondents.
 Mrs. P. F. Oduniyi, for 2nd-4th Respondents.

CASES REFERRED TO

George v. Dominion Flour Mills (1963) 1 SCNLR 117
 Management Enterprises Ltd. v. ABC Merchant Bank (1996) 6 NWLR (Pt.

452) 294

Akeredolu v. Akinremi (1989) 5 S.C. 102; (1989) 3 NWLR (Pt. 108) 64

Osho v. Foreign Finance Corporation (1991) 4 NWLR (Pt. 184) 157

U.A.C. (Nig.) Ltd. v. Fasheyitan (1998) 7 S.C. (Pt. II) 35; (1998) 11

NWLR 179

B

Ume v. Okoronkwo (1996) 10 NWLR (Pt. 477) 133 at 144

Chief Serbah v. Karikari (1938) 5 WACA 34

Nwadike v. Ibekwe (1987) 4 NWLR (Pt. 67) 718

Aderounmi v. Olowu (2000) 4 NWLR (Pt. 652) 253 at 265

C

Hambe v. Hueze (2001) 2 S.C. 26; (2001) 4 NWLR (Pt. 703) 385

STATUTE & RULES REFERRED TO

Chiefs Law Cap. 20 Laws of Ogun State, 1978

Court of Appeal Rules 1990 (as amended) O. 3 rr. 2(2) & (4)

D

LEAD JUDGMENT BY EJIWUNMI JSC

This appeal is against the judgment of the court below (Coram: Onalaja, Tabai and Adekeye, JJCA.), wherein the court affirmed the judgment of the trial court, except the portion of the judgment on the propriety of joining the 4th respondent as a party to the suit. The action which is the subject of the appeal, was commenced by the appellant at the High Court of Justice of Ogun State in the Sagamu Judicial Division, before Ogunade, J., claiming declaratory reliefs and injunction against the selection of the 1st respondent as the Odemo of Isara.

Following the orders of the trial court, the parties filed their pleadings and which were later amended with the leave of the court. Hence, the appellant's case is as contained in his Amended Statement of Claim. The defendants, now respondents, for their part defended the claims in two parts. For the first part, the 1st, 5th and 6th respondents filed an Amended Statement of Defence. The appellant joined issues with the respondents on their respective Statements of Defence by filing replies to Amended Statements of Defence of the 1st, 5th and 6th respondents, on the one part, and on the other, the 2nd, 3rd and 4th respondents. It follows that at the close of pleadings, the appellant relied upon his Amended

Statement of Claim, his reply to the Amended Statements of Defence of the 1st, 5th and 6th respondents, and also the reply filed to the Amended Statement of Defence of the 2nd 3rd and 4th respondents. On the other hand, the case for the 1st, 5th and 6th respondents is as postulated in their Amended Statement of Defence.

As I do not consider it necessary to set out the pleadings of the parties, I think that reference ought to be made at this stage to the reliefs sought in the action by the appellant as pleaded at paragraphs 23 of his Amended Statement of Claim. It reads thus: -

“(a) A declaration that the 1st defendant, Engr. Adebayo Idowu Onadeko’s purported nomination and selection as the Odemo of Isara, Isara Remo, Ogun State of Nigeria is unconstitutional, illegal and contrary to the Customary Law and as such null, void, ultra vires and of no effect whatsoever.

(b) A declaration that the submission of the 1st defendant’s name to the Kingmakers is null and void.

(c) A declaration that the non-submission by the Rokodo/Ogunsere Ruling House of the plaintiff’s name to the kingmakers as one of the candidates vying for appointment to the Chieftaincy is ultra vires the Ruling House, and illegal.

(d) A declaration that the 1st defendant is not qualified to be a candidate for appointment to the office or to be appointed as an Odemo of Isara, having regard to the Customary Law pertaining to the Odemo of Isara Chieftaincy.

An order in the nature of a mandatory injunction directing the Rokodo/Ogunsere to submit the name of the plaintiff to the kingmakers for consideration for appointment to fill the existing vacancy in the said chieftaincy.

(e) A declaration that the plaintiff being a qualified candidate is constitutionally entitled to vie, contest and be appointed as the Odemo of Isara, Isara Remo, Ogun State of Nigeria.

(f) A perpetual injunction restraining the 2nd to 6th defendants, their servants, privies, agents, officials and assigns from parading the 1st defendant or holding out the 1st defendant as the newly appointed Odemo

of Isara, Isara Remo, Ogun State of Nigeria.

(g) *An order of perpetual injunction restraining the 2nd, 3rd and 4th defendants, their agents, servants, privies, officials and assignees from announcing, appointing and/or ratifying the 1st defendant is the Odemo of Isara, Isara Remo Ogun State of Nigeria.*

(h) *An order of this Honourable Court on the 2nd to 5th defendants to take appropriate and fresh steps to comply with the Chiefs Law for the selection and appointment into the vacant position of the Odemo of Isara, Isara Remo, Ogun State of Nigeria”.*

In proof of his claims and to justify the reliefs sought, the appellant called three witnesses and the respondents also called three witnesses in support of their defence to the claims of the appellant. Several documents were also admitted as exhibits in the course of the trial. In addition, in what may be considered a novelty, a video tape of the proceedings covering the event that took place on the 10th of March, was tendered and admitted during the trial. The court subsequently viewed the proceedings as recorded.

The facts that led to the decision of the trial court that ultimately formed the basis of this appeal are not complicated. The facts may be rendered briefly as follows. The demise in January, 1994, of Oba A. O. Osideinde, the last Odemo of Isara signalled the race for his successor to the stool of Odemo of Isara, which is a recognized chieftaincy with an approved Chieftaincy declaration that was registered on 28th March, 1958. (See the Chiefs’s Law of Ogun State 1978). It is also pertinent to state that it is common ground between the parties that the dispute between the parties arose from the nomination, selection and installation of the 1st respondent as the Odemo of Isara, Isara Remo in Ogun State. It is also an agreed fact that it was the turn of the Rokodo/Ogunsere Ruling House to present a candidate for the vacant stool.

The case of the appellant as could be gathered from his pleadings and the evidence led at the trial appears to be that the nomination, selection and final appointment of the 1st respondent to the stool of Odemo of Isara are in breach of the provisions of the Chief’s Law of Ogun State. On this, it is claimed that under that law, a candidate for the stool of Odemo of Isara,

to be eligible, must be a descendant from the male line of a previous Odemo of Isara. However, it is claimed that as the 1st respondent descended from the sister of a previous Odemo of Isara, Oba Ogunsere, he was not eligible to be a candidate for the vacant stool. It is therefore claimed that his
B appointment as the new Odemo of Isara is illegal as each of the steps taken towards that effect, namely, his nomination and selection, were illegal. It is also the case for the appellant that he was also interested in contesting for the vacant stool, he was unfairly denied the opportunity to take part in the election for the stool. This is because though he was nominated by his
C father for the stool prior to the selection exercise that took place on the 10th of March, 1995, he was prevented from taking part in the exercise because of the way his nomination was treated at the general meeting of the Rokodo/Ogunsere Ruling House held on 10/3/95. This is in spite of the fact
D that on that day, his name was proposed there by his father, Chief Sosanya, P.W.1. It is also part of the case of the appellant that the general meeting of the Rokodo/Ogunsere Ruling House held on the 10/3/95 was itself illegal and all the decisions taken thereat were null and void, as the meeting was
E not validly constituted and its proceedings were unfairly conducted.

On the other hand, the case for the 1st, 5th and 6th respondents plainly appear to be that a meeting of the entire Rokodo/Ogunsere Ruling House was held on 20th August, 1994. At that meeting which was also
F attended by the (Ukoyade/Seenu branch) of the Ruling House, it was decided that a Nomination Committee be set up to consider candidates nominated by the respective branches of the Ruling House. That although the Ukoyade/Seenu branch to which the appellant belonged had two members on the Nomination Committee, that branch of the Ruling House
G did not forward any name to the Nomination Committee for consideration as a candidate for the vacant stool. It is also part of their case that the Nomination Committee unanimously and without any dissenting voice from any of its members, recommended the 1st respondent as the
H candidate to fill the vacant stool of Odemo of Isara to Rokodo/Ogunsere Ruling House for ratification. They also pleaded and led evidence that the 1st respondent was eligible for appointment to the vacant stool as he descended from the former Odemo of Isara, Oba Ogunsere. In addition,

they claimed that the investigation conducted into his candidature, the Nomination Committee was satisfied that he fulfilled all that they required of him to be recommended as the only candidate for the vacant stool.

With regard to the complaint of the appellant that the meeting of Rokodo/Ogunsere Ruling House held on 10th March, 1995 where the 1st respondent was nominated as the sole candidate for presentation to the kingmakers was not validly constituted and that the proceedings were unfairly conducted, the 2nd-4th respondents by their pleadings and the evidence led at the trial, denied the complaint of the appellant. Rather, their case appears to be that the notice of the meeting held on 10th March, 1995, was given to the entire members of Rokodo/Ogunsere Ruling House and also to Ikenne Local Government Officials and the State Security Service. That the Public Notice (Exhibit D) stated clearly that the purpose of the meeting was to fill the vacant stool of Odemo of Isara. They claimed that at the meeting a roll call of members of the Ruling House was taken, at the end of which 178 members, after proper identification, were accredited as authentic members of the Ruling House. It was also part of their case that since the only purpose of the family meeting was to ratify the consensus candidate already nominated by the Nomination Committee, the 1st respondent's name was put to the house for ratification. It was at that stage that the 1st P.W., Chief Sosanya objected to the nomination and put up, for the first time, the appellant, P. W. 1's son, as a contestant. Following that development, a vote was called for between the appellant and the 1st respondent. The result of the poll was 175 votes for the 1st respondent and 3 votes in favour of the appellant. After the conclusion of that exercise, the name of the 1st respondent was forwarded to the kingmakers who subsequently appointed the 1st respondent as the Odemo of Isara. The respondents upon the above facts, therefore contend that the selection, nomination and appointment of the 1st respondent as the Odemo of Isara were valid in law in that they were in conformity with the relevant provisions of the Chief's Law, Cap. 20, Laws of Ogun State, 1978.

At the conclusion of the hearing of the evidence led by the parties, the learned counsel appearing for them addressed the court. The court later delivered a considered judgment. By that judgment, the learned trial Judge

formed the view that the 3rd and 4th respondents were not proper parties to the action and he struck out their names from the suit. But with regard to the main action, the learned trial Judge held that from the totality of the evidence led, the appellant has failed to prove his case and it was dismissed in its entirety. As the appellant was dissatisfied with the judgment of the trial court, he appealed to the court below upon a notice of appeal containing 29 grounds of appeals. The court below, after due consideration of the argument of learned counsel on the issues raised in the appeal, dismissed the appeal. Hence the appellant has appealed further to this court upon an Amended Notice of Appeal consisting ten (10) grounds of appeal.

Subsequently and in accordance with the rules of this court, briefs of argument were filed and exchanged. At the hearing before us, learned counsel appearing for each of the parties, namely Bolaji Ayorinde for the appellant, Idowu Sofola, SAN., for the 1st, 5th & 6th respondents and Mrs. P. F. Oduniyi, Ministry of Justice, Ogun State, adopted and placed reliance on their respective brief of argument. Thereafter, each of the learned counsel addressed the court in expatiation of some aspects of their briefs affecting the issues raised in the appeal. In accordance with rules, issues for the determination of this appeal were set down in each of the briefs filed by learned counsel. In the brief filed on behalf of the appellant, four issues were identified for the determination of the appeal, while counsel for the 1st, 5th and 6th respondents and the 2nd-4th respondents identified three issues each in their respective briefs of argument. After a careful perusal of the issues raised in their briefs, it is manifest that they are substantially similar to one another. However, though four issues were identified in the appellant's brief for the determination of this appeal, I will consider the merits of the appeal in accordance with those issues raised in appellant's brief. They read thus:-

"1. Whether the court below was not in error in striking out grounds 1,3,4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 21 of the appellant's grounds of appeal and issues 1, 2, 3, 5, 6, 7, 8, 9, 10, and 12 formulated thereon for want of competence and whether that decision is not a nullity for infringing the appellant's right to fair hearing. (Grounds 1,2, 3, 4, 5 & 7)

2. *Whether the decision of the court below affirming the selection of the 1st respondent as the Odemo of Isara can stand in law, when the appellant, who is a qualified candidate, was unjustifiably deprived of his right to participate in the selection exercise? (Grounds 8 & 9)*

(3) *Whether the court, as an appellate court, can make findings of fact which do not stem from the cases of the parties before it and what is the consequence of such findings? And*

(4) *Whether the 1st respondent was qualified to have contested for the office of Odemo of Isara when the requirement of the chieftaincy declaration was not met and whether the decision of the court below affirming the 1st respondent's selection is justifiable?" (Ground 10).*

ISSUE 1

On this issue, the crux of the case for the appellant is that, he was deprived of fair hearing by the court below when that court struck out virtually all his grounds of appeal and the issues raised thereon. In effect, the contention being made for the appellant is that, the appellant was deprived the opportunity of ventilating his complaint against the judgment of the learned trial Judge. Learned counsel then argued that the court below wrongly relied on the authority of *Nwadike v. Ibekwe* (1987) 4 NWLR (Pt. 67) 718 and other authorities cited in that judgment to strike out appellant's grounds 1,3,4, 5,6,7, 8,9, 10, 11, 12,13 and 21. And fell into further error by striking out also issues 2,3,4,5,6,7,8,9,10,11, 12 and 13 predicated on the said grounds of appeal. Learned counsel then submitted that the court has moved from its strict adherence to the technical interpretation of the rules of court governing the meaning and effect of grounds of appeal. It is his further submission that the mere description of a ground of appeal as an error and a misdirection at the same time does not necessarily render such a ground of appeal incompetent. According to learned counsel, what the court now seeks to do is to consider whether the ground of appeal conveyed in sufficiently clear terms the complaint of the appellant to the respondent and if the court so hold, the ground will not be struck out for incompetence. In support of the above submission, we were referred to the following authorities: *Aderounmi v. Olowu* (2000) 4 NWLR (Pt. 653) 253 at pp. 245-266; *Ogundare Osasona v. Ola Adetoyinbo Ajayi & Ors.*

(2004) 14 NWLR (Pt. 894) 527 at 545; Yakeem Odonigi v. Aileru Oyeleke (2001) 6 NWLR (Pt. 708) 12 at 23-24.

Having regard to the above submission, learned counsel invites the court to hold that as the court below did not consider the grounds of appeal that were struck out in the light of the authorities cited above, the grounds of appeal were wrongly struck out. Learned counsel for the appellant also urged the court to hold that as the court below wrongly struck out those grounds of appeal, the appellant was not allowed to ventilate his complaints against the judgment and was thereby denied the right to fair hearing. For this proposition, reference was made to these cases: Olumesan v. Ogundepo (1996) 2 SCNJ 172; Yaya Adigun v. A-G Oyo State (1987) 1 NWLR (Pt. 50) 678; Otapo v. Sunmonu (1987) 2 NWLR (Pt. 58) 587. And learned counsel therefore urged that the appeal be allowed for all the reasons given above.

Learned counsel for the 1st, 5th and 6th respondents in the respondents' brief recognized as he had to, the general submission of learned counsel for the appellant, the several authorities cited with regard to how to determine the competency of a ground of appeal to this court and the Court of Appeal. They include the following Nwadike v. Ibekwe (supra); Dokun Ajayi Libiyi v. Alhaji Abdul Anretiola (1992) 8 NWLR (Pt. 258) 139 at 169. With regard to Aderounmu v. Olowu 4 NWLR (Pt. 652) 265-266, learned counsel submits that the dictum of Ayoola, JSC, in that case only sought to emphasize that once a ground of appeal sufficiently discloses the complaint of the appellant against the judgment appealed from, that ground of appeal though couched as a ground of law and a misdirection, should not for that reason alone, be declared incompetent. He went on to submit that in any event, the complaints of the appellant were fully considered by the court below. It is therefore his submission that the appellant cannot ask that the appeal be allowed on the premise that he was denied fair hearing by the court below. In support of his submission in his brief, learned counsel cited these cases: Engineering Enterprises Ltd. v. A-G. Kaduna (1987) 2 NWLR (Pt. 57) at 381 and David Osuagwu v. A-G Anambra (1993) 4 NWLR (Pt. 285) 13.

In the brief filed on behalf of the 2nd - 4th respondent, their learned

counsel responding to the several contentions made for the appellant submitted that the question raised should be considered in the light of the provisions of Order 3 rule 2(2) and (4) of the Court of Appeal Rules 1990 (as amended). Counsel then submitted that the provisions state clearly that a ground of appeal alleging misdirection or error in law must be clearly B stated. The rules, argued counsel, also went on to stipulate that no ground which is vague or general in terms of which discloses no reasonable ground of appeal shall be permitted, save the general ground that the judgment is against the weight of evidence and any ground of appeal or any C part thereof which is not permitted under this rule may be struck out by the court of its own motion or on application by the respondent. It is therefore the submission of counsel that where as in the instant case, the appellant filed grounds of appeal alleging error in law and misdirection in facts, such which failed to comply with the Rules of court are incompe- D tent, and they were properly struck out by the court below. The issues raised on the grounds of appeal that were struck out were also properly struck out, being without competent grounds of appeal;. The following cases were cited in support of the submissions of counsel; Hambe v. Hueze E (2001) 2 S.C. 26; (2001) 4 NWLR (Pt. 703) 372 at 374; Adah v. Adah (2001) 2 S.C. 1; (2001) 5 NWLR (Pt. 705) 1 at p. 3; Hannah K. Agundo v. Mercy N. Gberbo (1999) 9 NWLR (Pt. 617) 70.

With regard to whether the appellant was denied fair hearing on F account of his grounds of appeal that were struck out, the view of learned counsel for the 2nd - 4th respondents is that he was not denied fair hearing. This is because, argued learned counsel, the court below considered very carefully all the complaints of the appellant in the course of its judgment. For that submission, reference was made in Etebilo Abisi & 4 Ors. v. G Vincent Ekwealor & Anor (1993) 6 NWLR (Pt. 302) 643 at 675. In view of the very well articulated submission made by counsel in respect of the questions raised under this issue, it is, I think, desirable to refer to some of the cases where similar questions on the meaning and effect of H misdirection and error in law a ground of appeal have been considered in this court. It is in my respectful view apposite to begin the consideration of the cases with Chidiak v. Laguda (1964) 1 All NLR 160, 162-163,

“Time and again do cases come up on appeal in which matters are treated in the grounds of appeal as misdirection which are no more than findings of fact by the trial Judge. Perhaps it is time to make it clear again what is regarded as a direction. In the case of Bray v. Ford (1896) AC 44
 B *at 49 Lord Watson said that:*

‘Every party to a trial by jury has a legal and constitutional right to have the case which he has made, either in pursuit or in defence, fairly submitted to the consideration of that tribunal.’

“This is done by the trial Judge directing the jury, who are the
 C *Judges of fact, as to the issues of fact, and what is the law applicable to those issues. A misdirection therefore occurs when the issues of fact, the case for the plaintiff or for the defence, or the law applicable to the issues raised are not fairly submitted for the consideration of the jury. Where,*
 D *however, the Judge sits without a jury, he misdirects himself if he misconceives the issues, or summaries (sic) the evidence inadequately or incorrectly or makes a mistake of law, but provided there is some evidence to justify a finding it cannot properly be described as a misdirection. It is*
 E *of course desirable, and we consider that it should be the practice that the particular findings to which objection is to be taken at the hearing of an appeal should be specified in the grounds of appeal alleging that the judgment was against the weight of evidence.”*

It is therefore manifest from a careful perusal of the above quoted
 F *excerpt of Taylor, JSC., that a misdirection occurs when a judge misconceives the issues or summarizes the evidence inadequately or incorrectly for one side or the other, or makes mistakes in the law applicable to the issues in the case. But the question still remains as to*
 G *whether a misdirection and an error in law can be properly joined in the same ground of appeal. In order to answer this question, reference would be made to Hambe v. Hueze (2001) 2 S.C. 26; (2001) 4 NWLR (Pt. 703) where at page 385, Ogundare, JSC., stated thus:-*

“This issue has recently been resolved by this court in Aderounmi & Anor. v. Olowu (2000) 4 NWLR (Pt. 652) 253 at 265. It is there decided that a ground of appeal alleging error in law and misdirection in fact is not thereby incompetent if it otherwise complies with the rules of court

requiring that a ground of appeal be not vague or general in terms (save what is generally known as the omnibus ground) and discloses a reasonable ground of appeal such that the respondent is given sufficient notice of the precise nature of the appellant's complaint."

Then at page 386, he made this observation in respect of the decision referred to in Aderounmi v. Olowu (supra)

"In my judgment in the case, after setting out the rules of court, I did say at page 198: These provisions spell out what are required of a ground of appeal and the purpose is to ensure that the respondent is not taken by surprise. Once, therefore, a ground of appeal clearly states what the appellant is complaining about and there is compliance with the rules of court, I cannot describe such a ground as bad and therefore incompetent. The dictum of Nnaemeka-Agu, JSC., in Nwadike v. Ibekwe (supra) did not go as far as some of the Lordships of the Court of Appeal made it to look. The learned Justice of the Supreme Court advised against lumping together in a ground of appeal complaints that ought better to have been split into different grounds of appeal. I commend his wise counsel to all legal practitioners engaged in drafting notices of appeal. I do not think, however, that non-adherence to this wise counsel will necessarily render incompetent any ground of appeal that otherwise complies with the requirements of the rules. And it is in this regard that I am of the view that Olanrewaju v. Bank of the North (1994) 8 NWLR (Pt. 364) 6221 was correctly decided by the Court of Appeal."

And at page 389 Achike, JSC., said as follows:-

"As stated above, my decision on issue one would have concluded this appeal. But I wish to say a word on issue two because of the apparent mix-up or confusion in which similar complaint has long been shrouded. The issue is whether or not in law, a ground of appeal alleging a misdirection in law and on facts, is incongruous, defective and not worthy of consideration. The issue being contested has its tap-root in the dictum of Nnaemeka-Agu, JSC., in Nwadike v. Ibekwe (1987) 4 NWLR (Pt. 67) 718, (1987) 11-12 SCNJ 72, at 99-100, where the learned Justice of the Supreme Court stated:

Let me pause here to observe that a ground of appeal cannot be an

error in law and a misdirection at the same time, as the appellants grounds postulate. By their very nature one ground of appeal cannot be the two. For, the word “misdirection” originated from the legal and constitutional right of every party to a trial by jury to have the case while (sic) he has made, either in pursuit or in defence, fairly submitted to the consideration of the tribunal, (See Bray v. Ford (1985) AC 44 at 49). In our system in which the Judge is judge and jury, a misdirection occurs when the Judge misconceives the issues, whether of facts or of law, or summarizes the evidence inadequately or incorrectly. See Chidiak v. Laguda (1964) NMLR 123, at 125.

He may commit a misdirection either by a positive act or by non-direction. But when his error relates to his finding it cannot properly be called a misdirection: it could be error in law. This is why the appellant’s grounds 4, 5, 7 and 8 said to be “error in law and misdirection” are, above all other defects, obvious incongruities.”

His Lordship continued:

“A precis of the above observation is that a ground of appeal that alleges “an error in law and misdirection at the same time” is incongruous. This observation, on its own, may not ordinarily be easily faulted. My understanding of what the learned Justice was saying is that such approach in framing a ground of appeal is not very elegant. I cannot agree mere with him. Unfortunately, that innocuous and prudent observation has been misconstrued and blown out of context by both legal practitioners and the bench. The result is that once a ground of appeal is couched in that rather inelegant form under reference the adversary party has invariably urged the appellate court to strike it out on the ground of incompetence. This ought not to be the case. Always, as in the case on hand and in Nwadike v. Ibekwe (supra) the authorities of Anyaoko v. Adi (1986) 3 NWLR 731, and Ogbachie v. Onochie (1986) 2 NWLR (Pt. 23) 484 are referred to in support of the contention. Those cases are, with respect, of no moment with regard to the specific issue of lumping together complaints of “error of law and misdirection of facts” in one ground of appeal. As a matter of fact, Anyaoko v. Adi (supra) deals with several issues none of which has any relevance to the issue under consideration while Onyechie v. Onochie

(*Supra*) is the of-cited authority on the acid test of whether a ground of appeal is one of pure law or mixed law and fact or fact alone.”

After referring further to what Ayoola, JSC., said in the said judgment, he went on to clarify his position thus:

“In the matter under controversy, it appears to me that the fulcrum of the matter is whether an appellant, having regard to the rules of Court has reasonably formulated his grounds of appeal in substantial compliance with the said Rules of court, notwithstanding the defects or inelegance in the formulation, but so long as the adversary party, from reading the formulated grounds of appeal, is duly notified of the complaint sought to be made by the appellant. The reason for such objective approach is to ensure that any questioning of the validity of a ground of appeal is not simply predicated on form but rather on substance. After all, it is beyond per adventure that today the application of the rules of court and attainment of justice is generally no longer allowed or tolerated to be controlled by strict adherence to technicalities but rather to substance.”

It is, in my view, clear that from the above dicta reproduced, the decisions of this court that their thrust is that a competent ground of appeal should in the first place be drafted in conformity with the relevant Rules of this court or of the court below. Where that has been done, then the ground of appeal would not be declared incompetent unless it is vague, inconclusive and couched in such general terms that it discloses no reasonable ground of appeal. In other words, a ground of appeal which does not give sufficient notice of the precise nature of the complaints of the appellant against the judgment appealed from is incompetent and deserves to be struck out by an appellate court. It is no doubt the principle that the court should endeavour to do substantial justice between the parties. The interest of justice must not be such as to allow an erring party to be given undue advantage over the respondent at the receiving end. I have in the light of the principles referred to above looked at the grounds of appeal struck out by the court below and which formed the subject to the complaint, arrived at the conclusion that the court below was right to have struck them out. In the result issue (I) is

resolved against the appellant.

Issue II

The question raised under this issue is, whether the decision of the court below affirming the selection of the 1st respondent as the Odemo of Isara can stand in law, when the appellant, who is a qualified candidate was unjustifiably deprived of his right to participate in the selection exercise

In order to have this question answered in favour of the appellant, learned counsel for the appellant submitted that the learned trial Judge made three findings which he considered erroneous. And he further argued that the court below also fell into error in affirming the findings of the trial court. The enquiry as to whether the court below was wrong to have affirmed the judgment of the trial court must therefore commence with the said findings of the trial court. They read thus:-

“(i) *Plaintiff’s name was not submitted in accordance with the registered declaration;*

(ii) Even if the plaintiff’s name was submitted, it was conditional and that the fact that plaintiff did not submit his credentials makes him ineligible to contest, and

(iii) Plaintiff participated in the selection exercise as he was defeated in the voting conducted as between 1st respondent and the plaintiff.”

As it is the submission of learned counsel that the above findings by the trial court and its affirmation by the court below cannot stand the test of evidence on the printed record, I will not proceed to consider each of these findings in the light of the printed record. For this purpose, the argument put forward by each counsel will also be considered.

The enquiry that we are concerned with here is, whether the appellant’s name was submitted in accordance with the registered declaration pertaining to the selection, nomination and appointment of the Odemo of Isara.

For the contention that the court below wrongly affirmed the trial court that the appellant’s name was not submitted in accordance with the registered declaration, learned counsel for the appellant relied heavily on Exhibit “J” and Exhibit “J” is the registered declaration codifying the

custom that regulates the mode of selection of candidates into the office of Odemo of Isara, paragraph (v) of which reads thus:-

“(v) On being registered by the Osugbos, the Odis and the Emos to provide a candidate for consideration, the Ruling House whose turn it is to provide a candidate shall nominate at a family meeting or meetings to be summoned by the family head a candidate for the chieftaincy to be presented to the kingmakers. The candidate who will be presented to the kingmakers must be of recognized ability, character and popular support.”

In order to show further that the courts below were wrong, learned counsel contends that from the above quoted regulation, a would-be candidate should have his name nominated at the family meeting or meetings to be summoned by the family head, and also that as the regulation is silent as to whether the nomination should be oral or written, a candidate could signify his intention to contest for the stool by either an oral or written application. He also referred to the evidence of 1st D.W., Ayodele Akindele Sowale who said that a branch of the ‘Ruling House’ is entitled to propose a candidate directly to the family if it so desired. This proposal, he added could also be made at or before the general meeting. Learned counsel for the appellant therefore submitted that the appellant duly applied for nomination by a letter Exhibit ‘E’ written on 5/3/95 to the Olotu Ebi Ogunsere (Head of the family of Ogunsere). This was done, according to the evidence of P.W.1 following the agreement reached on 4/3/95 by the Ukoyade/Seenu descendants to nominate the appellant as their candidate for the vacant stool of Odemo of Isara.

Now, it is clear from the evidence given above including that of P.W. 1 that the appellant placed reliance on Exhibit ‘E’ to show that the appellant was duly proposed for nomination for the vacant stool of Odemo of Isara before the family meeting of the 10th of March, 1995. However, in order to properly appreciate this evidence, it is necessary to refer to the events that happened before then. For that it is necessary to refer to the evidence of P.W.1 when he was cross-examined by learned counsel for the 1st, 5th and 6th respondents at page 189 of the printed record, where he said

“It is perfectly true that at the General Meeting of 5/3/94, the

Rokodo/Ogunsere Ruling House decided that the family would like to put forward one of their best Princes. It is true that it was as a result of the excellent performance of Oba Rokodo that his brother was appointed to succeed him. That situation was peculiar to Rokodo/Ogunsere Ruling House. It was for the purpose of selecting candidates who would perform excellently as our forebears that Rokodo/Ogunsere Ruling House established a Nomination Committee.”

Before the piece of evidence, he had said at page 197 thus: -

“The Nomination Committee set up by Ogunsere family came into existence as a result of a message from the Kingmakers that Ogunsere family should provide the candidate to fill the vacant stool of Odemo of Isara. I agree with you that Rokodo/Ogunsere Ruling House is one Ruling House made up of Rokodo family and Ogunsere family. The two families are one. Rokodo is the elder brother of Ogunsere of the same parents. I am not in a position as the eldest person in the family today, to say that they are full-blooded brothers. I know quite a lot about Rokodo/Ogunsere Ruling House; both as the oldest person in that Ruling House today and as the recorder of historical facts of Oba Ogunsere family. I am an authority on that Ruling House.”

And a little later on the same page 189, P. W. 1 had this to say: -

“It is the duty of the Nomination Committee to receive all the applications and forward the same to the family; it is not the duty of the committee to screen the candidates. I agree with you that the credentials of each candidate must be screened, but the screening should be done by the General Meeting of the Ogunsere family and not by the Nomination Committee.”

The P.W. 1 as I will presently show is clearly not alone about the appointment of a Nomination Committee to consider the candidate that would be nominated by the branches of the family to vie for appointment to the vacant stool. In this regard, let me refer to the evidence of D.W.1, Ayodele Akintunde Sowale, the Oliwo of Isara and Chairman of the Odemo of Isara Kingmakers whose evidence at pages 244-245 read thus:-

“On 20/8/94 it was decided that a Nomination Committee be formed for the purpose of nominating the next Odemo of Isara from the Ogunsere/

Rokodo Ruling House. The decision to form a Nomination Committee was taken at the General Meeting of the Rokodo/Ogunsere Ruling House. I know the 1st PW., he is the plaintiff's father. I cannot remember now whether the 1st P.W. was present at the meeting where the decision to form a Nomination Committee was taken. The Nomination Committee was asked to consider the possibility of nominating a candidate for the vacant stool of Odemo of Isara. It was decided that each of the 9 Idi-igi be represented by two members to form the Nomination Committee. The Ukoyade branch was represented by Messrs. G. O. Olateju and U. O. Ogunmona. The Chairman of the Nomination Committee was Mr. S. O. Sogbetun. Mr. Sogbetun is the deputy chairman of Rokodo Ruling House. The committee is to consider each candidate nominated by the Idi-Igis before arriving at the selection of one candidate. I am the Secretary to the Nomination Committee. The Ukoyade Seenu branch did not forward the name of any candidate to the Nomination Committee for consideration. The Nomination Committee always report back their decisions to the Rokodo/Ogunsere Ruling House at their general meetings. I did not at any time manipulate the affairs of the Nomination Committee. The 1st defendant, Adebayo Idowu Onadeko, was finally recommended by the Nomination Committee as the candidate of the Rokodo/ Ogunsere Ruling House for the vacant stool of Odemo of Isara. The entire family heartily accepted the recommendation of the 1st defendant. The meeting directed that a letter be addressed to the 1st defendant indicating that he has been accepted as the choice of the family for the vacant stool. The letter was written before the 1st defendant's nomination, his qualification for the stool was examined. He was found to be a Prince from Odusami Branch. The plaintiff's father, 1st P.W., was present at the general meeting where the final decision was taken."

On a careful reading of the pieces of evidence given above, it is in my humble view manifest that it was agreed by the Ruling House that a candidate who wished to be considered for the stool in contest, must have his name submitted to the Nomination Committee appointed by the Ruling House. It is also clear that before the 10th of March, 1995, the only candidate considered by the Nomination

Committee was the 1st respondent as the appellant's name was not submitted to that committee. It seems to me from the foregoing that the appellant through his father P. W. 1 having agreed as a member of the Rokodo/Ogunsere Ruling House that a Nomination Committee be set up to select a candidate to consider the credentials of whoever applied for the stool, cannot now seek to resile from that agreement by seeking to whittle the powers given to the Nomination Committee. The learned trial Judge in the course of his judgment carefully considered this aspect of the evidence before him and was right when he said thus as page 301:-

"The falsity of that assertion becomes more manifest when one considers the statement of the 1st plaintiff's witness in Exhibit E in which he proposed to send the credentials of the plaintiff for the Nomination Committee's action. I hold that the Nomination Committee was set up to screen the credentials of those who applied to be considered as candidate and their personal attributes contained in paragraph (v) of the registered declaration."

Learned trial Judge then went on to make this crucial finding in the following passage of his judgment: -

"Learned counsel for the plaintiff has submitted that the Ruling House abdicated its role to the Nomination Committee when it allowed the Nomination Committee to screen and nominate a candidate for the approval of the Ruling House. I find myself unable to agree with her submission. The Nomination Committee was set up by the entire Ruling House as part of the nomination process." (Underlining mine)

And after further appraisal of the evidence before him, the learned trial Judge said at pp. 301-302 that:

"From all the evidence available both documentary, oral and visual, the Ruling House remained the authority to nominate the candidate and that was what it did on 10/37/95 when the Secretary asked for nomination to fill the vacant stool and Chief R. A. Abass nominated the 1st defendant and the nomination was supported by S. B. Sogbetun and the nomination and objection of Chief J. A. Sosanya were put to the entire 178 who voted 175 in favour of the nomination and 3 against. There is no

question of the Ruling House delegating its power to nominate to the Nomination Committee.”

The above findings were affirmed by the court below, and it is my view that from the evidence on record, that court was right to have affirmed the findings of the trial court. There can be no doubt that it was an agreed fact that the members of the Ruling House had in order to select a candidate for the stool set up a Nomination Committee to achieve that purpose. It was therefore the duty of persons interested to follow that procedure. As the appellant had not taken that step, I fail to see how it can fairly be said that he was denied the opportunity of contesting for the stool. I must therefore uphold the judgment of the court below on this issue, no satisfactory argument having been advanced to show that the reasoning of the court below was perverse.

The 3rd issue would now be considered. The question raised under the issue is that the court below made findings of fact which were not based on evidence led at the trial. However, from what I have said in respect of issue 2, my view is, there is no merit in respect of this issue.

Issue 4

Under this issue, the complaint of the appellant is that the courts below fell into error in holding that the 1st respondent was qualified to contest for the office of the Odemo of Isara. The main contention made for appellant by his learned counsel is that the 1st respondent was shown by the appellant’s pleadings in paragraphs 9 and 22(v) of his Amended Statement of Claim that he was not a qualified candidate to fill the vacant stool of Odemo of Isara. The averment made in those paragraphs of the appellant’s pleadings is that the 1st respondent is not a direct descendant of Oba Ogunsere. It is his further contention that as the respondents were not misled by the averments of the appellant, they then gave evidence upon the pleadings, and that without asking further particulars from the appellant. It is therefore the submission of learned counsel for the appellant that the trial court was wrong to have gone on to hold that, as the appellant did not plead particulars of genealogy of Oba Ogunsere and that, such

failure was fatal. The learned Judge was wrong, learned counsel further submitted because the respondents did not raise any objection to the pleadings of the appellant in that regard. And he went further to submit that even on the strength of the available evidence proffered by the respondents, it is apparent that the 1st respondent is not a direct descendant of Oba Ogunlere. He therefore urges this court to set aside the decision of the court below affirming the finding of the trial court that the 1st respondent is a direct descendant of Oba Ogunlere. He, as far as the appellant was concerned, the 1st respondent is related to the Ogunlere family through Aroba, a female child, and was therefore a descendant from the female line.

It is however the contention of the respondents that the 1st respondent was eligible for nomination to the vacant stool having regard to genealogy of Oba Ogunlere. His genealogy was properly pleaded and evidence led to that effect. It is further argued that the reference to pleadings by the learned trial Judge was to show that the appellant ought to have if there was anything to the contrary, ought to have filed a reply brief to that effect. **Now, it is the law that parties are bound by their pleadings, and that should have guided the appellant in the pursuit of his case. And having not pleaded such facts to enable him lead evidence thereon, it was open to the trial court to reject such evidence.** See *George v. Dominion Flour Mills* (1963) 1 SCNLR 117; *George v. U.B.A. Ltd.* (1972) 8-9 S.C. (Reprint) 158. In *George v. Dominion Flour Mills* (supra), Bairamian, FJ., delivering the judgment of the court in emphasizing why pleadings must be such as would enable parties to know well in advance the case to be met at the trial, said at page 123 of the Report as follows:

“The fairness of a trial can be tested by the maxim audi alteram partem. Either party must be given an opportunity of being heard; but a party cannot be expected to prepare for the unknown; and the aim of pleadings is to give notice of the case to be met; which enables either party to prepare his evidence and arguments upon the issues raised by the pleadings, and saves either side from being taken by surprise. Incidentally, it makes for economy. The plaintiff will, and indeed must,

confine his evidence to those issues; but the cardinal point is the avoidance of surprise.”

Also in Chief Victor Woluchem & Ors. v. Chief Simon Gudi & Ors. (1981) 5 S.C. (Reprint) 178; (1981) 1, 2, 4 Nnamani, JSC., at page 194 said:-

“The court should concern itself only with evidence on those matters which have been included in the pleadings. Emegokwue v. Okadigbo (1973) 4 S.C. (Reprint) 78; (1973) 4 S.C 113 at 117; George & Ors. v. Dominion flour Mills (1963) 1 ANLR 71 at 77; African Continental Seaways Ltd. v. Nigerian Dredging Roads and General Works Ltd. (1977) 5 S.C (Reprint) 141; (1977) 5 S.C 235 at p. 248 and National Investment Co. Ltd. v. Thompson Organization (1969) NMLR 104.”

The key as to whether the 1st respondent is a qualified person to be nominated and appointed to the stool of the Odemo of Isara is in my humble view, Exhibit J., the Odemo of Isara Chieftaincy declaration. The relevant section reads thus:-

"Paragraph (III) of the Chieftaincy Declaration states as follows:

The persons who may be proposed as candidates by a Ruling House entitled to fill the vacancy shall be

(a) members of the Ruling House

(b) of the male line, provided that succession may devolve on the female where the former holders of the chieftaincy have no living issues or descendants of recognized ability, character and popular support, such a candidate shall be a true descendant of the female.

(c) sons of a previous holder of the title.”

It is therefore clear that by virtue of this provision, the Ruling House was entitled to fill the vacancy by the 1st respondent who emerged as the only candidate, though from a female line, who possessed the recognized ability, character and popular support to justify his candidature. This issue must therefore be resolved against the appellant.

This appeal being against concurrent findings by the two lower courts in respect of the claims of the appellant to the stool of Odemo of Isara, the appellant has the burden of showing that those findings

should not be upheld by this court. This is because it is now settled practice that the Supreme Court will not interfere with concurrent findings of the lower courts unless they are not justified by the evidence and have thereby occasioned a miscarriage of justice. See

B **Akeredolu v. Akinremi (1989) 5 S.C. 102; (1989) 3 NWLR (Pt. 108) 64; Osho v. Foreign Finance Corporation (1991) 4 NWLR (Pt. 184) 157; U.A.C. (Nig.) Ltd. v. Fasheyitan (1998) 7 S.C. (Pt. II) 35; (1998) 11 NWLR 179.**

C **In the instant case, having regard to all that I have considered with regard to the issues raised in the appeal, it is my view that the appellant has failed to discharge that burden. In the result, this appeal must be dismissed** and it is hereby dismissed by me with N10,000.00 costs in favour of the two sets of respondents in this appeal.

D

ONUJSC

Having been privileged to read before now the judgment of my learned brother, Ejiwunmi, JSC., just delivered. I am in entire agreement with the reasoning and conclusion that the appeal is unmeritorious and ought to fail. I accordingly dismiss it and make similar consequential orders as contained therein.

F

TOBIJSC

G This is yet another chieftaincy dispute. Nigerians hold dearly to their chieftaincy institutions and fight ferociously and relentlessly whenever the institutions are either tampered with or trespassed on. This is one of such disputes. I do not think I will state the facts of this case as my learned brother has very adequately stated them in his leading judgment. I will however refer to the facts and evidence in relevant areas.

H The appellant has formulated the following four issues for determination:

“1. Whether the court below was not right in striking out grounds 1,3,4,5,6,7, 8,9,10,11,12,13 and 21 of the appellant’s grounds of appeal

and issues 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 12 formulated thereon for want of competence and whether that decision is not a nullity for infringing the appellant's right to fair hearing?

2. Whether the decision of the court below affirming the selection of the 1st respondent as the Odemo of Isara can stand in law, when the appellant, who is a qualified candidate, was unjustifiably deprived of his right to participate in the selection exercise?

3. Whether the court below, as an appellate court, can make findings of fact which do not stem from the case of the parties before it and what is the consequence of such findings? And

4. Whether the 1st respondent was qualified to have contested for the office of Odemo of Isara when the requirement of the chieftaincy declaration was not met and whether the decision of the court below affirming the 1st respondent's selection is justifiable?"

The 1st, 5th and 6th respondents have formulated three issues for determination. The 2nd and 4th respondents have also formulated three issues for determination.

I shall take issues 1, 2 and 4 of the appellant's brief. Issue 1 deals with the striking out of grounds 1,3,4,5,6,7,8,9,10,11,12,13 and 21 of the grounds of appeal and issues 1, 2, 3, 5, 6, 8, 9, 10 and 12 of the appellant's brief in the Court of Appeal. The thrust of the submission of learned counsel for the appellant is that the Court of Appeal was wrong in striking out the grounds of appeal and the related issues for determination, a decision which counsel submitted violated the appellant's right to fair hearing. Both counsel for the two sets of respondents submitted that the Court of Appeal was right in striking out the grounds of appeal and the related issues.

Delivering the leading judgment of the court, Onalaja, JCA., said at page 444 of the Record:

"Grounds 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,13 and 21 of appellant's grounds of appeal as framed and couched alleged error in law and misdirection of facts. After an in-depth consideration of the above listed grounds of appeal they raised complaints of error in law and misdirection, the method runs contrary to Order 3 rule 3(2) Court of Appeal Rules

interpreted from line of authorities that a ground of appeal cannot be an error in law and a misdirection of fact at the same time such grounds is incompetent. A fortiori the above listed grounds of appeal are incompetent, they are hereby struck out."

B On the related issues, the learned Justice said at page 445.

"As a result, issues 1, 3, 5, 6, 7, 8, 9, 10, 11, 12 and 13 argued on the following grounds of appeal.... having been argued with incompetent grounds of appeal based on Nwadike v. Ibekwe supra Bereyin v. Obodo supra, ACB v. Eagle Super Pack Nig. Ltd. (supra) are hereby struck out with the appeal sustained on the omnibus ground 15 that the judgment is against the weight of evidence which is permissible vide the rule in Etebilo Abisi & 43 Ors. v. Vincent Ekwealor & Anor. (1993) 6 NWLR (Pt. 302) page 643 at 675 per Ogundare, JSC."

D One decision the Court of Appeal relied upon was Nwadike v. Ibekwe (1987) 4 NWLR (Pt. 67) 718 where Nnaemeka-Agu, JSC., said at page 744:

"A ground of appeal cannot be an error in law and a misdirection at the same time, as the appellant's grounds clearly postulate. By their very nature one ground of appeal cannot be the two. For the word "MISDIRECTION" originates from the legal and constitutional right of every party to a trial by jury to have the case which he had made either in pursuit or in defence fairly submitted to the consideration of the tribunal."

F It would appear that the above decision has been watered down or should I say qualified in subsequent decisions of this court. See Aderounmi v. Olowu (2000) 4 NWLR (Pt. 652) 253 at 265 and Hambe v. Hueze (2001) 2 S.C. 26; (2001) 4 NWLR (Pt. 703) 385. This court would seem to have taken a more liberal view on the issue devoid of arid legalism and technicality.

G In the determination of the strengths of grounds of appeal in an appeal, this court should not involve itself instinctively and parochially in technicalities or niceties of our adjectival law in the interpretation of the enabling rules of court. On the contrary, this court should examine the grounds of appeal to see whether they satisfy the rules governing the framing of grounds. Once a ground of appeal is succinctly couched,

specifically described and avoids vagueness, repetition, narration or argument, to the extent that the adverse party knows the exact complaint against the judgment, the court will be very reluctant to strike it out on mere technicality of not following rules of court. After all, it is good law that rules of court are made for the courts and not the other way round and that is, the courts are not made for their rules. This means that if compliance with rules of court will cause injustice or miscarriage of justice in the case, the court will, in its choice of doing substantial justice, detract or move away from the rules of court.

Relevantly, the point I am struggling to make is that this court should not look at the expressions “error in law” and “misdirection” in water-tight compartments of closets that can never meet at the same time in a ground of appeal. They could in some situations and they could not in some other situations. After all, tributaries, rivers, seas and oceans freely meet and flow together in their waters with no harm. Why should “*errors in law*” and “*misdirection*” not meet at all like night and day?

I think this court should examine the totality of the ground of appeal to see whether apart from, or outside the meeting of the two expressions, the ground of appeal contains sufficient complaint about the judgment to the adverse party to the extent that the adverse party is not put in any speculation or conjecture about what he is going to meet in the appellate court. A strict and rigid rule at dichotomizing between “*error in law*” and “*misdirection*” in all grounds of appeal and for all times will be an artificiality with no practical substance in our adjectival law and the wider dimensions of the administration of justice. I will reject such a position.

And that takes me to the grounds of appeal struck out. Apart from the fact that virtually all the grounds of appeal; struck out complained that the “*learned trial Judge erred in law and in fact*”, most of the particulars of error are not properly stated. Where a ground of appeal alleges misdirection, the particulars of such misdirection must be lucidly given. See Okorie v. Udom (1960) 5 FSC 162; Amadi v. Okoli (1977) 7 S. C. 57. Where a ground of appeal alleges misdirection, an appellate court has a duty to find out whether such misdirection occasioned a miscarriage of justice. See Yaro v. The State (1972) 2 S.C. (Reprint) 58; (1972) 4 S.C

63. An appellant who alleges a misdirection on the part of the trial court must not only show such misdirection to the appellate court but must also show and convince the court either that such misdirection in fact prejudicially affects his case or that such misdirection potentially has that effect on his case. See *Cobham v. The State* (1970-72) 1 RSLR 49.

After a very careful examination of Issue No. 1, I have no difficulty in coming to the conclusion that the Court of Appeal was right in striking out the grounds of appeal. As the issues were formulated from the grounds of appeal which were struck out, the Court of Appeal was also right in striking out the issues. See *Idika v. Erisi* (1988) 2 NWLR (Pt. 78) 563; *Management Enterprises Ltd. v. ABC Merchant Bank* (1996) 6 NWLR (Pt. 452) 294; *Madumere v. Okafor* (1996) 4 NWLR (Pt. 445) 637. Even, expanding the frontiers of Isaac Newton's law of gravity justifies the scientific conclusion in relation to the above that while one can add or join something to something and expect the two to stand together, one cannot add something to nothing and expect them to stand. After all, there will be "nothing" to enable the "something" to stand.

Learned counsel for the appellant submitted that by striking out the grounds of appeal and the related issues, the appellant was denied fair hearing. The principles of fair hearing can only apply in a case where a party has the right to be heard on a court process. If a party has no right to be heard in respect of a court process because the court process does not comply with the rules of court, the party cannot be heard to invoke the principles of fair hearing. In the circumstances, Issue No.1 fails and I dismiss it accordingly.

That takes me to Issue No. 2. The complaint here is that the Court of Appeal held in favour of the 1st respondent and not the appellant who was the qualified candidate to participate in the selection exercise. The direct issue is, who was qualified to contest the election, the appellant or the 1st respondent? What were the findings of the learned trial Judge which were upheld by the Court of Appeal? Appellant has succinctly put them in their numbered paragraphs at page 10 of his brief. They read:

"(i) Plaintiff's name was not submitted in accordance with the registered declaration.

(ii) *Even if the plaintiff's name was submitted, it was conditional, and that the fact that plaintiff did not submit his credentials makes him ineligible to contest.*

(iii) *Plaintiff participated in the selection exercise, as he was defeated in the voting conducted as between 1st respondent and the plaintiff. The Court of Appeal confirmed these findings on page 460 to the records."*

Learned counsel for the appellant submitted that the above findings are perverse, incompetent and liable to be set aside, and he so urged the court. Is he correct?

P.W.1 the father of the appellant in his evidence in court, said:

"The first general meeting of Ogunsere Ruling House of 5/3/94 was convened by me and I was present at that meeting which was a meeting attended by members of Rokodo/Ogunsere Ruling House. I agree with you that at that meeting it was agreed that necessary machinery for a nomination of a candidate to fill the vacant stool of Odemo of Isara be put in motion.....On 4/3/95 the name of the plaintiff was agreed to be presented by the Ukoyade/Seenu descendants.....This is their branch of the family.....I now agree that it was decided that the choice should be kept a top secret until the name is announced at a public gathering. The public gathering I am referring to is the general meeting of Oba Ogunsere family. I was present at the official nomination meeting of Rokodo/Ogunsere Ruling House held on 10/3/95."

P.W.2, in his evidence confirmed the evidence of P.W.1 on the issue of keeping the family secrets secret. He said:

"My family traditionally has its own way of handling sensitive issues. I believe that is the reason why the chairman has re-emphasized that the nomination be kept secret until an appropriate time when he will reveal it."

It is clear from the above evidence that the appellant decided to keep his nomination secret, in accordance with their family tradition. By the evidence of P.W.1, the father of the appellant, *"it was decided that the choice should be kept a top secret until the name is announced at a public gathering"* which was the general meeting of Oba Ogunsere family.

P.W.1 said in evidence:

“Mr. Amos Sosanya is my brother. He attended the General Meeting of 10/3/95 where the nomination took place. Nobody proposed the name of the plaintiff at the meeting of 10/3/95. At the meeting of 10/3/95 the name of the first defendant was proposed and the proposal was supported. The manner in which the name was presented was such that another name could not be proposed because that name was the only one which the Nomination Committee of Ogunsere family had presented to the Ogunsere family and was communicated to the Rokodo/Ogunsere Ruling House before the meeting of 10/3/95. On 4/3/95 the name of the plaintiff was agreed to be presented by the Ukoyade/Seenu descendants and I confirmed that in writing of 5/3/95.”

In the light of the above fairly confusing and confused evidence of the appellant’s witnesses, the learned trial Judge said at page 311 of the record.

“I reject the evidence defence of the plaintiff’s witnesses that the plaintiff’s name was proposed before the nomination meeting of 10/3/95.”

I am in grave difficulty to reject the above finding of the learned trial Judge. I expected the appellant to say at the 10/3/95 nomination meeting that his name had earlier been nominated on 5/3/95. I do not think I am prepared to accept the evidence of the father (P.W.1) that the circumstances were such that there could be no other nomination apart from that of the 1st respondent. I am more inclined to the earlier position taken by the family of the appellant and it was to keep the family secrets secret. It would appear that by the time the family decided to reveal the secret, it was too late as the game was over. I do not think the appellant can, after eating his whole cake, still struggle to have it. That is impossible.

Let me go to the registered declaration. It is Exhibit J., the learned trial Judge said in respect of the exhibit at pages 295 and 296 of the record.

“The said declaration is Exhibit J., apart from the qualifications a person who may be proposed as candidate should have as stated in paragraph (iii) of Exhibit J, paragraph (v) states the mode of nomination of a candidate and additional qualification. The said paragraph (v) is as follows:

“(v) *On being requested by the Osugbos, the Odis and the Emos to provide a candidate for consideration, the Ruling House whose turn it is to provide a candidate shall nominate at a family meeting or meetings to be summoned by the family head a candidate for the Chieftaincy to be presented to the kingmakers. The candidate who will be presented to the Kingmakers must be of recognized ability, character and popular support:* (Underlining mine) Implied in the above are the following: (a) *the Ruling House at a family meeting or meetings shall nominate one candidate, (b) The meeting or meetings shall be summoned by the family head, (c) The candidate must be of recognized ability, character and enjoy popular support.*”

In the light of the above, it is difficult to fault the learned trial Judge on finding (i) above.

That takes me to finding (ii) above. It has to do with submission of credentials. On the issue of submission of credentials. P.W.1, the father of the appellant, said:

“*I did not submit at any time after Exhibit E present the credentials of the plaintiff to anyone because I was told at a Committee Meeting which was to arrange the meeting of the 10/3/95 that the name will not be considered.*”

The learned trial Judge dealt with the issue. He said at pages 300 and 301:

“*I reject the evidence of the 1st plaintiff’s witness to the extent that it is not the duty of the Nomination Committee to screen the candidates and the evidence that the screening of the credentials of each candidate should be done by the General meeting of Ogunsere Family as outright afterthought. The falsity of that assertion becomes more manifest when one considers the statement of the 1st plaintiff’s witness in Exhibit E in which he proposed to send the credential of the plaintiff for the Nomination Committee’s action. I hold that the Nomination Committee was set up to screen the credentials of those who applied to be considered as candidate and their personal attributes as contained in paragraph (v) of the Registered Declaration.*”

In Exhibit E, J. Adeleye Sosanya, Head of Ukoyade Seenu’s line

wrote in paragraph 4 thereof.

“The formal application and credentials of Mr. A. M. Sosanya, at the moment in Abuja, the Federal Capital, together with supporting evidence of the qualification for the vacant stool will be submitted in the course for the Nomination Committee’s action.”

Reacting to the above, learned counsel for the appellant submitted that paragraph 4 is irrelevant as same is not required by Exhibit J. With respect, I do not agree with counsel. Paragraph 4 is relevant in the determination of the issue on credentials or qualification and that takes care of finding (ii) above.

Now to finding (iii). This has to do with the voting at the selection. Dealing with the issue, the Court of Appeal said at page 460 of the Record.

“Also it is common ground that at the general family meeting of 10th March, 1995 1st respondent was recommended as the eligible candidate as a result of an election between appellant and 1st respondent whereas appellant scored 3 votes whilst 1st respondent scored 175 votes. By virtue of the result of the election 1st respondent was recommended as the sole candidate eligible to become the Odemo of Isara.”

And that completes finding (iii) above. And so I ask: why the furore of the appellant? I do not see any. Accordingly, I dismiss issue No. 2.

Issue No. 4 is on the qualification of 1st respondent. Learned counsel for the appellant submitted that the 1st respondent was not qualified to contest for the office of Odemo of Isara, as he is not a direct descendant of Oba Ogunsere.

D.W.1 in his evidence said at page 245 of the Record:

“Before the 1st defendant respondent’s nomination, his qualification for the stool was examined. He was found to be a prince from Odusame Branch.”

The learned trial Judge dealt with the issue at pages 294 of the Record:

“I therefore hold that all the evidence by the plaintiff (appellant) through his witnesses in respect of the descent of the 1st defendant (respondent) as it relates to the branches which constitute the Rokodo/Ogunsere Ruling House to be of no effect. The only evidence, which I have

before me, is that the 1st defendant's witness which traced the descent of the 1st defendant to Oba Ogunsere through Odusame branch. Since there is no contradictory evidence, I shall answer the first part of the first issues positively, namely that the 1st defendant being a descendant of Oba Ogunsere through Odusame line is entitled to be nominated as a candidate for the vacant stool of Oba Odemo of Isara." B

I cannot see my way clearly in rejecting the above finding as it is clearly borne out from the evidence before the court. Issue No. 4 also therefore fails.

It is in the light of the above and the more detailed reasons given by my learned brother, Ejiwunmi, JSC, in the leading judgment that I also dismiss the appeal. I award N10,000.00 costs to the respondents. C

EDOZIE JSC

This appeal stems from a chieftaincy dispute in respect of the succession to the chieftaincy stool of Odemo of Isara, Ogun State which became vacant following the demise in January, 1994, of the last incumbent, Oba A. O. Osideinde. In the process of filling that vacancy by the Rokodo/Ogunsere Ruling House whose turn it was to occupy the stool, the 1st respondent. Engineer Adebayo Idowu Onadeko was on 10/3/95 nominated at a general meeting of the aforesaid Rokodo/Ogunsere Ruling House, and subsequently was selected by the kingmakers and installed as the new Odemo of Isara. Consequent upon that, the appellant Prince Adebajo Sosanya instituted an action at the Ogun State High Court to challenge the appointment of the 1st respondent. The action was dismissed and so was his appeal to the Court of Appeal, Ibadan Division. In his further appeal to this court, the appellant is complaining, inter alia, that he was denied fair hearing in the court below by reason that some of his grounds of appeal were wrongly struck out as being incompetent; that though he was eligible for appointment to the stool, he was unjustifiably deprived of the right to participate in the selection exercise and finally that the 1st respondent was not qualified to be appointed. D

In the leading judgment just read by my learned brother, Ejiwunmi,

JSC., His Lordship has meticulously examined those complaints and I agree with him that they are bereft of any substance. I agree that the court below was justified in striking out the grounds of appeal complained of. I will add that even if those grounds were wrongly struck out, which is not conceded, the appellant was not thereby denied a fair hearing as it did not occasion any miscarriage of justice. This is so because, the court below, conscious of its role of doing substantial justice to the parties, based on the issues it formulated from the only competent ground of appeal, considered all the conceivable complaints against the judgment of the trial court. The learned senior counsel for the appellant did not pin-point at any complaint that was not addressed and show that if such a complaint had been considered and resolved in his favour, the result would have been different. I also take the view that the complaints about the eligibility of the 1st respondent and the alleged deprivation of the appellant's right to participate in the selection exercise are matters of fact in respect of which there has been a concurrent finding of the two lower courts resolving the issues in favour of the 1st respondent. It has been the practice of this court not to disturb such concurrent findings unless there are special circumstances dictating otherwise. I am not persuaded from the issues agitated in this appeal that there exist such special circumstances to justify the interference with those findings: See *Ume v. Okoronkwo* (1996) 10 NWLR (Pt. 477) 133 at 144; *Chief Serbah v. Karikari* (1938) 5 WACA 34; *Chinwendu v. Mbamali* (1980) NSCC 128; (1980) 3-4 S.C 31; *Ibodo & Ors. v. Enarofia & Ors.* (1980) NSCC 195 and *Enan & Ors. v. Adu* (1981) 11-12 S.C. (Reprint) 17. In the event, like my learned brother, Ejiunmi, JSC, I also dismiss the appeal with costs as assessed in the leading judgment.

AKINTANJSC

H I had the privilege of reading the draft of the leading judgment just delivered by my learned brother, Ejiunmi, JSC. He has fully set out the facts of the case and all the issues raised in the appeal are discussed extensively. I agree with his reasoning and conclusion that there is no merit

in the appeal.

The issues raised in the appeal are mainly issues bordering on finding of facts and evaluation of the evidence led at the trial. The learned trial Judge carefully evaluated the evidence presented to him by the parties. He made specific findings of fact in respect of all the important questions B needed to be resolved in the case. I have no doubt that he arrived at just conclusions. The appellant's case was that he was not given a fair hearing during the selection process. But the evidence on the printed record does not support this allegation. It is on record that when the appellant's father C raised the issue of the appellant's nomination, his nomination was immediately accepted and voting was conducted between him and the 1st respondent, who was hitherto the only candidate before the appellant's candidature was brought into the matter. The result of the voting showed D a crushing defeat of the appellant by 175 votes for the 1st respondent as against the 3 votes scored by the appellant. The voters were members of the Ruling House of which the appellant and his father were members.

The appellant has not given reason for his massive defeat, apart from the allegation that he was not given fair hearing. A situation where E the members of the family were made to select a candidate through voting process which resulted in a crushing defeat of the appellant, in my view, cannot be said to be one in which the losing candidate was not given a fair hearing. F

Also the allegation that the 1st respondent was not qualified to be nominated on the ground that his relationship was through female line is without basis. This is because, even if that allegation was true, the position is that paragraph 111 of the Odemo of Isara Chieftaincy Declaration G permits the nomination of a candidate from the female line "*where the former holders of the chieftaincy have no living issues or descendants of recognized ability, character and popular support.....*" That provision permits the selection of the 1st respondent over the appellant even if H his connection is from the female line. The family probably believed that the 1st respondent has better recognized ability or better character or better popular support over and above the appellant. The question of superior popularity of the 1st respondent over the appellant was clearly shown by

the humiliating defeat by 175 votes to 3 in the voting that took place during the selection.

For the above reasons and the fuller reasons given in the leading judgment, which I adopt, I also dismiss the appeal with costs as assessed
B in the leading judgment.

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